

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

YVONNE BROWN,)	
)	
Plaintiff,)	
)	CIVIL ACTION
v.)	
)	FILE No. _____
LA FIESTA MEXICAN)	
RESTAURANT #5, INC. and)	
CARLOS A. HERNANDEZ)	
d/b/a CLH REAL ESTATE, L.L.C.,)	
)	
Defendants.)	

COMPLAINT

COMES NOW, YVONNE BROWN, by and through the undersigned counsel, and files this, her Complaint against Defendants LAFIESTAMEXICAN RESTAURANT #5, INC. and CARLOS A. HERNANDEZ d/b/a CLH REAL ESTATE, L.L.C. pursuant to the Americans with Disabilities Act, 42 U.S.C. § 12181 *et seq.* (“ADA”) and the ADA’s Accessibility Guidelines, 28 C.F.R. Part 36 (“ADAAG”). In support thereof, Plaintiff respectfully shows this Court as follows:

JURISDICTION AND VENUE

1. This Court has original jurisdiction over the action pursuant to 28 U.S.C. §§ 1331 and 1343 for Plaintiff’s claims pursuant to 42 U.S.C. § 12181, *et seq.*, based upon Defendants’ failure to remove physical barriers to access and

violations of Title III of the ADA.

2. Venue is proper in the federal District Court for the Northern District of Georgia, Atlanta Division, as the parcel of real property at issue in this case is located in Douglas County, Georgia.

PARTIES

3. Plaintiff YVONNE BROWN (hereinafter “Plaintiff”) is, and has been at all times relevant to the instant matter, a natural person residing in Douglasville, Georgia (Douglas County).

4. Plaintiff suffers from Epilepsy, Multiple Sclerosis (“MS”) and has suffered multiple injuries resulting in irreversible damage to her legs, and is disabled as defined by the ADA.

5. Plaintiff is required to traverse in a wheelchair and is substantially limited in performing one or more major life activities, including but not limited to: walking and standing.

6. Plaintiff uses a wheelchair for mobility purposes.

7. Defendant LA FIESTA MEXICAN RESTAURANT #5, INC. (hereinafter “La Fiesta”) is a Georgia corporation that transacts business in the state of Georgia and within this judicial district.

8. LA FIESTA may be properly served with process via its registered

agent for service, to wit: Cecilio Chavez, 7411 Mason Falls Drive, Winston, Georgia 30187.

9. Defendant CARLOS A. HERNANDEZ (hereinafter “Hernandez”) is an individual whom, upon information and good-faith belief, has been a resident of the state of Georgia at all times relevant hereto.

10. Hernandez may be properly served with process at 5459 Dukes Road, Douglasville, Georgia 30135-5226.

FACTUAL ALLEGATIONS

11. On or about July 16, 2022, Plaintiff was a customer at La Fiesta’s business located at 9611 Highway 5, Douglasville, Georgia 30133.

12. La Fiesta is the lessee (or sub-lessee) of the parcel of real property and improvements from which its business operates, and that is the subject of this Complaint. (Said parcel real property shall be referenced herein as the “Property,” and the structures and improvements situated upon the Property shall be referenced herein as the “Facility.”)

13. Hernandez, conducting business as “CLH Real Estate, L.L.C.,” an administratively dissolved Georgia limited liability company, is the owner of the real property and improvements that are the subject of this action.

14. Plaintiff lives approximately three (3) miles from Facility and

Property.

15. Plaintiff's access to the business located at 9611 Hwy 5, Douglasville, Georgia 30133 (Douglas County Property Appraiser's parcel number 01290250002), and/or full and equal enjoyment of the goods, services, foods, drinks, facilities, privileges, advantages and/or accommodations offered therein were denied and/or limited because of her disabilities, and she will be denied and/or limited in the future unless and until Defendants are compelled to remove the physical barriers to access and correct the ADA violations that exist at the Facility and Property, including those set forth in this Complaint.

16. Plaintiff has visited the Facility and Property at least once before and intends on revisiting the Facility and Property once the Facility and Property are made accessible.

17. Plaintiff intends to revisit the Facility and Property to purchase goods and/or services.

18. Plaintiff travelled to the Facility and Property as a customer and as an advocate for the disabled, encountered the barriers to her access of the Facility and Property that are detailed in this Complaint, engaged those barriers, suffered legal harm and legal injury, and will continue to suffer such harm and injury as a result of the illegal barriers to access present at the Facility and Property.

COUNT I
VIOLATIONS OF THE ADA AND ADAAG

19. On July 26, 1990, Congress enacted the Americans with Disabilities Act 42 U.S.C. § 12101 *et seq.* (the “ADA”).

20. The ADA provided places of public accommodation one and a half years from its enactment to implement its requirements.

21. The effective date of Title III of the ADA was January 26, 1992 (or January 26, 1993 (if a defendant has 10 or fewer employees and gross receipts of \$500,000 or less). 42 U.S.C. § 12181; 28 C.F.R. § 36.508(a).

22. The Facility is a public accommodation and service establishment.

23. The Property is a public accommodation and service establishment.

24. Pursuant to the mandates of 42 U.S.C. § 12134(a), on July 26, 1991, the Department of Justice and Office of Attorney General promulgated federal regulations to implement the requirements of the ADA. 28 C.F.R. Part 36.

25. Public accommodations were required to conform to these regulations by January 26, 1992 (or by January 26, 1993 if a defendant has 10 or fewer employees and gross receipts of \$500,000 or less). 42 U.S.C. § 12181 *et seq.*; 28 C.F.R. § 36.508(a).

26. Liability for violations under Title III or the ADA falls on “any person

who owns, leases (or leases to), or operates a place of public accommodation.” 42 U.S.C. § 12182(a).

27. The Facility must be, but is not, in compliance with the ADA and ADAAG.

28. The Property must be, but is not, in compliance with the ADA and ADAAG.

29. Plaintiff has attempted to, and has to the extent possible, accessed the Facility and the Property in her capacity as a customer of the Facility and Property, but could not fully do so because of her disabilities resulting from the physical barriers to access, dangerous conditions and ADA violations that exist at the Facility and Property that preclude and/or limit her access to the Facility and Property and/or the goods, services, facilities, privileges, advantages and/or accommodations offered therein, including those barriers, conditions and ADA violations more specifically set forth in this Complaint.

30. Plaintiff intends to visit the Facility and Property again in the future as a customer and as an advocate for the disabled in order to utilize all of the goods, services, facilities, privileges, advantages and/or accommodations commonly offered at the Facility and Property, but will be unable to fully do so because of her disability and the physical barriers to access, dangerous conditions and ADA

violations that exist at the Facility and Property that preclude and/or limit her access to the Facility and Property and/or the goods, services, facilities, privileges, advantages and/or accommodations offered therein, including those barriers, conditions and ADA violations more specifically set forth in this Complaint.

31. Defendants have discriminated against Plaintiff (and others with disabilities) by denying her access to, and full and equal enjoyment of the goods, services, facilities, privileges, advantages and/or accommodations of the Facility and Property, as prohibited by, and by failing to remove architectural barriers as required by, 42 U.S.C. § 12182(b)(2)(A)(iv).

32. Defendants will continue to discriminate against Plaintiff and others with disabilities unless and until Defendants are compelled to remove all physical barriers that exist at the Facility and Property, including those specifically set forth herein, and make the Facility and Property accessible to and usable by Plaintiff and other persons with disabilities.

33. A specific list of unlawful physical barriers, dangerous conditions and ADA violations which Plaintiff experienced and/or observed that precluded and/or limited Plaintiff's access to the Facility and Property and the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of the Facility and Property include, but are not limited to:

(a) EXTERIOR ELEMENTS:

- (i) The total number of accessible parking spaces on the Property is inadequate, in violation of section 208.2 of the 2010 ADAAG standards.
- (ii) The accessible parking space on the Property is missing an identification sign, in violation of section 502.6 of the 2010 ADAAG standards.
- (iii) The accessible parking space on the Property does not have an adjacent access aisle, in violation of section 502.3 of the 2010 ADAAG standards.
- (iv) The Property has a ramp leading from the accessible parking space(s) to the accessible entrances of the Facility that has a slope exceeding 1:12 (one to twelve), in violation of section 405.2 of the 2010 ADAAG standards. The ground surfaces of this ramp are not stable or slip resistant, in violation section 405.4 of the 2010 ADAAG standards.
- (v) The accessible entrance to the Facility has door hardware that requires tight grasping and/or twisting of the wrist, in violation of section 309.4 of the 2010 ADAAG standards. This door also

requires an opening force in excess of 5 lbs. (five pounds), in violation of section 309.4 of the 2010 ADAAG standards.

- (vi) The doorway threshold at the accessible entrance to the Facility has a vertical rise in excess of ½” (one half inch) that is not beveled or ramped, in violation of section 404.2.5 of the 2010 ADAAG standards.

(b) INTERIOR ELEMENTS:

- (i) The interior of the Facility does not have restroom signage that complies with sections 216.8 and 703 of the 2010 ADAAG standards.
- (ii) The hardware on the restroom doors in the Facility have operable parts that require tight grasping, pinching or twisting of the wrist, in violation of section 309.4 of the 2010 ADAAG standards.
- (iii) The restroom doors in the Facility do not provide for permissible minimum maneuvering clearance, in violation of section 404.2.4 of the 2010 ADAAG standards.
- (iv) There is inadequate clear turning space in the restrooms in the Facility, in violation of section 603.2.1 of the 2010 ADAAG

standards.

- (v) There grab bars adjacent to the commodes in the restrooms in the Facility fail to comply with section 604.5 of the 2010 ADAAG standards.
- (vi) The hand operated flush controls on the commodes in the restrooms in the Facility are not located on the open side of the restroom, in violation of section 604.6 of the 2010 ADAAG standards.
- (vii) The restrooms in the Facility have cabinet-style sinks that provide for no knee and toe clearance, in violation of sections 305, 306 and 606.2 of the 2010 ADAAG standards.
- (viii) The paper towel dispensers in the restrooms in the Facility are located outside the prescribed vertical reach ranges set forth in section 308.2.1 of the 2010 ADAAG standards.

34. The Facility and Property have not been adequately maintained in operable working condition for those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities, in violation of section 28 C.F.R. § 36.211.

35. Upon information and good faith belief, Defendant fails to adhere to a

policy, practice and procedure to ensure that all features and facilities at the Facility and Property are readily accessible to, and usable by, disabled individuals such as Plaintiff.

36. Without limitation, the above-described violations of the ADAAG made it more difficult for Plaintiff to find and utilize an accessible parking space on the Property, more difficult and dangerous to utilize the accessible ramp servicing the Property, more difficult for Plaintiff to enter and exit the Facility, and rendered the restroom in the Facility inaccessible to Plaintiff.

37. The violations enumerated above may not be a complete list of the barriers, conditions or violations encountered by Plaintiff and/or which exist at the Facility and Property.

38. Plaintiff requires an inspection of Facility and Property in order to determine all of the discriminatory conditions present at the Facility and Property in violation of the ADA.

39. The removal of the physical barriers, dangerous conditions and ADA violations alleged herein is readily achievable and can be accomplished and carried out without significant difficulty or expense. 42 U.S.C. § 12182(b)(2)(A)(iv); 42 U.S.C. § 12181(9); 28 C.F.R. § 36.304.

40. All of the violations alleged herein are readily achievable to modify

to bring the Facility and Property into compliance with the ADA.

41. Upon information and good faith belief, the removal of the physical barriers and dangerous conditions present at the Facility and Property is readily achievable because the nature and cost of the modifications are relatively low.

42. Upon information and good faith belief, the removal of the physical barriers and dangerous conditions present at the Facility and Property is readily achievable because Defendants have the financial resources to make the necessary modifications.

43. In instances where the 2010 ADAAG standards do not apply, the 1991 ADAAG standards apply, and all of the alleged violations set forth herein can be modified to comply with the 1991 ADAAG standards.

44. Plaintiff is without adequate remedy at law, is suffering irreparable harm, and reasonably anticipates that she will continue to suffer irreparable harm unless and until Defendants are required to remove the physical barriers, dangerous conditions and ADA violations that exist at the Facility and Property, including those alleged herein.

45. Plaintiff's requested relief serves the public interest.

46. The benefit to Plaintiff and the public of the relief outweighs any resulting detriment to Defendants.

47. Plaintiff's counsel is entitled to recover its reasonable attorney's fees and costs of litigation from Defendants pursuant to 42 U.S.C. §§ 12188 and 12205.

48. Pursuant to 42 U.S.C. § 12188(a), this Court is provided authority to grant injunctive relief to Plaintiff, including the issuance of an order to modify the Facility and Property to the extent required by the ADA.

WHEREFORE, Plaintiff prays as follows:

- (a) That the Court find LA FIESTA MEXICAN RESTAURANT #5, INC. in violation of the ADA and ADAAG as to each violation enumerated herein that is under its ownership, possession and/or control;
- (b) That the Court find CARLOS A. HERNANDEZ d/b/a CLH REAL ESTATE, L.L.C. in violation of the ADA and ADAAG as to each violation enumerated herein that is under his ownership, possession and/or control;
- (c) That the Court issue a permanent injunction enjoining Defendants from continuing their discriminatory practices;
- (d) That the Court issue an Order requiring Defendants to (i) remove the physical barriers to access and (ii) alter the subject Facility to make it readily accessible to and useable by individuals with disabilities to the

extent required by the ADA;

- (e) That the Court award Plaintiff her reasonable attorneys' fees, litigation expenses and costs; and
- (f) That the Court grant such further relief as just and equitable in light of the circumstances.

Dated: August 12, 2022.

Respectfully submitted,

/s/Craig J. Ehrlich

Craig J. Ehrlich

Georgia Bar No. 242240

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 5.1

The undersigned hereby certifies that the foregoing document has been prepared in accordance with the font type and margin requirements of Local Rule 5.1 of the Northern District of Georgia, using a font type of Times New Roman and a point size of 14.

/s/Craig J. Ehrlich

Craig J. Ehrlich